IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

FAO (Ord) No.475 of 2002.
Reserved on: May 17, 2007.
Decided on: June 13, 2007

Prithi **…..Appellant.**

VERSUS

Sarwani Devi & Ors. **…..Respondents.**

Coram

The Hon'ble Mr.Justice Kuldip Singh, Judge.

Whether approved for reporting?[1] No

For the Appellant: **Mr.Ajay Sharma, Advocate.**

For the Respondents: **Mr.Y. Paul, Advocate for proposed LRs No.1(a) to 1(e).**

Kuldip Singh, Judge

This appeal has been directed against the order dated 26.9.2002 passed by the learned District Judge, Una in Civil Misc. Application No.9 of 1998 whereby immovable property of appellant has been attached and he has further been detained in civil prison for a period of one month. The parties are referred in the same manner as in impugned order.

2. The facts in brief are that in Civil Appeal No.7/95 in CMA No.35/95 the learned District Judge on 18.5.1995 passed an interim order restraining respondent in that appeal from alienating the suit property in any manner till the disposal of the appeal. The order was

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[1] ***Whether the reporters of the local papers may be allowed to see the Judgment? Yes***

passed in presence of counsel for respondent Prithi. The order dated 18.5.1995 attained finality as it was not assailed by way of appeal or revision. The respondents were aware of the order dated 18.5.1995 despite that respondent No.1 Prithi executed sale deed of the suit property in favour of respondent No.2 and a mutation of the sale was also attested on 31.12.1997. It has been alleged that the respondents have willfully disobeyed the order dated 18.5.1995. On these grounds, a prayer was made for attaching, selling the property of the respondents and also to send them in civil prison for disobeying the Court order.

3. The application was contested by respondent No.1 by filing reply. It was submitted that Civil Appeal No.7/95 has been finally decided and against that second appeal has been filed in the High Court. The order dated 18.5.1995 was not denied but remaining application was simply denied without taking any defence or elaborating the denial.

4. The learned District Judge vide impugned order allowed the application and ordered the attachment of immovable property of Prithi and his detention in civil prison for a period of one month. The respondent No.1 Prithi has thus filed the present appeal in this Court.

5. I have heard the learned counsel for the parties and have also gone through the record.

6. AW-1 Dev Raj, Registration Clerk, has proved copy of sale deed dated 2.12.1997 Ext.AW-1/A. AW-2 Ashok Kumar is the

scribe of sale deed. A copy of application under Order 39 Rules 1 and 2 read with Section 151 C.P.C. is Ext.A-1. Copy of order dated 18.5.1995 is Ext.A-2. RW-1 Prithi in his statement has stated that the case was decided by trial Court in his favour and thereafter he sold some part of the suit land to Joginder Singh. The appeal has been decided against him and against that he has filed an appeal in the High Court. He has denied disobedience of the Court order. In cross examination, he has stated that his counsel did not tell him about the interim order passed by the Court. This is the evidence which the parties have led in the disobedience application.

7. The learned counsel for respondent No.1 Prithi has submitted that there is no willful disobedience of the interim order dated 18.5.1995 Ext.A-2. He has submitted that the order dated 18.5.1995 was not conveyed by the counsel for respondents in Civil Appeal No.7/95. He has also urged that no case for disobedience of the order dated 18.5.1995 has been proved on record. The learned counsel representing the legal representatives of original respondent Rattan Singh has supported the impugned order.

8. It has been proved on record that the respondents in Civil Appeal No.7/95 were restrained vide order dated 18.5.1995 Ext.A-2 from alienating the suit property in any manner till the disposal of appeal. It has also been proved that a part of the suit property has been sold by respondent No.1 Prithi to Joginder Singh respondent No.2 vide sale deed dated 2.12.1997 Ext.AW-1/A. The plea of

respondent No.1 Prithi that he was not aware of interim order dated 18.5.1995 and that order was not conveyed to him by his counsel has no force. In reply to disobedience application, respondent No.1 Prithi has not stated that he was not aware of the interim order nor he has stated that the interim order was not conveyed to him by his counsel. The absence of the knowledge of the interim order on the part of respondent No.1 Prithi has not been proved. This plea is nothing but after though. The respondent No.1 Prithi knowing fully well of the interim order and in violation of the Court order has sold the part of the suit property. He has taken no step for restoring the *status-quo* ante. In the reply also he has not shown any remorse nor he has tendered apology. The conduct of respondent No.1 Prithi after the order dated 18.5.1995 has also established that he willfully disobeyed the order dated 18.5.1995. The learned District Judge has rightly appreciated the material on record. The impugned order does not call for any interference.

9. In view of the above discussion, the appeal is dismissed with no order as to costs.

(Kuldip Singh)
Judge.

June 13, 2007
(soni)